

COTTONWOOD HEIGHTS

RESOLUTION No. 2011-51

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH CITY OF HOLLADAY FOR FIRE PROTECTION COVERAGE

WHEREAS, UTAH CODE ANN. §11-13-101, *et seq.* (the “*Interlocal Cooperation Act*”) provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, the City of Holladay (“*Holladay*”) and the city of Cottonwood Heights (the “*City*”) are public agencies for purposes of the Interlocal Cooperation Act; and

WHEREAS, in 2004, Holladay, the City and other public agencies jointly created an interlocal entity known as the Unified Fire Authority (“*UFA*”) to provide fire protection and emergency protection services to such member parties; and

WHEREAS, the cost of operating the UFA is allocated and apportioned among the various UFA members based on their respective pro-rata shares of the cost of firefighters and firefighting equipment assigned to stations in the various jurisdictions; and

WHEREAS, it has been determined that certain inequities exist because, *inter alia*, firefighters and apparatus assigned to stations located in the City routinely provide fire protection and emergency service to certain areas of Holladay; and

WHEREAS, pursuant to the authority granted in the Interlocal Cooperation Act, Holladay and the City desire to enter into an “interlocal agreement” (the “*Agreement*”) whereunder Holladay will reimburse the City for the cost incurred by the City to provide such fire protection and emergency services coverage, on the terms and conditions specified in the Agreement; and

WHEREAS, the city council (the “*Council*”) of the City met in regular session on 20 December 2011 to consider, among other things, approving the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, the city attorney of the City has approved the form of the Agreement as required by *Utah Code Ann.* §11-13-202.5(3); and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the City’s residents to approve the City’s entry into the Agreement as proposed in order to make efficient use of the City’s resources;

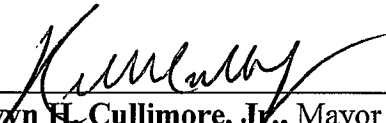
NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with Holladay is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

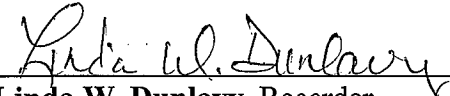
This Resolution, assigned no. 2011-51, shall take effect immediately upon passage.

PASSED AND APPROVED this 20th day of December 2011.

COTTONWOOD HEIGHTS CITY COUNCIL



By 
Kelvyn H. Cullimore, Jr., Mayor


Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 20^h day of December 2011.

RECORDED this 22 day of December 2011.

Interlocal Agreement for Cost Reimbursement for Fire Protection and Emergency Medical Services Coverage

THIS INTERLOCAL AGREEMENT FOR COST REIMBURSEMENT FOR FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES COVERAGE (this "*Agreement*") is made effective 1 July 2011 by and among the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*Cottonwood Heights*") and the **CITY OF HOLLADAY**, a Utah municipality whose address is 4580 South 2300 East, Holladay, UT 84117 ("*Holladay*"). Cottonwood Heights and Holladay each are referred to herein as a "*Party*," and collectively are referred to herein as the "*Parties*."

RECITALS:

A. Pursuant to a certain "Cooperative Agreement by Public Agencies to Create a New Entity to Provide Fire Protection and Emergency Medical Services and Rules of Governance" (the "*UFA Interlocal*") made effective 1 January 2004, as amended, Salt Lake County, both of the Parties, and a number of other municipalities and political subdivisions located in Salt Lake County, Utah (collectively, the "*UFA Members*"), jointly created an interlocal entity known as the Unified Fire Authority ("*UFA*") to provide fire protection and emergency medical services (the "*Services*") in the geographical area comprising the jurisdictional limits of such governmental entities.

B. The policies and procedures adopted by UFA's governing body (the "*UFA Board*") pursuant to the UFA Interlocal apportion and allocate the overall cost of operating the UFA among the various UFA Members based on firefighters assigned to stations within the various jurisdictions and a pro-rated share of firefighting equipment.

C. Despite the UFA Board's efforts to equitably allocate charges among the UFA Members, certain inequities invariably result (due to, *inter alia*, the number of jurisdictions, the amount of geography, the complexities of assuring adequate coverage, and the fact that fire station locations were determined before the Parties were incorporated, rendering "first in" response duties in some cases incompatible with the financial assessment of those stations), effectively resulting in one UFA Member (the "*Paying Member*") financially subsidizing another UFA Member (the "*Receiving Member*") through the Paying Member's payment to the UFA for Services consistently received by the Receiving Member.

D. Following significant research by the Parties, they have determined that such inequities exist concerning provision of Services in the Southern portion of Holladay, in that Cottonwood Heights' Station 110 and Station 116, through their crews (collectively, the "*Stations*"), routinely provide "first in" Services ("*First In Services*") to certain areas of Holladay (the "*First In Areas*") as shown on the attached map (the "*Map*"). In the past, the Parties have informally shared the cost of First In Services from the Stations, but now desire to formalize those arrangements.

E. Consequently, pursuant to authority granted in the Interlocal Cooperation Act (UTAH CODE ANN. § 11-13-101, *et seq.*) (the "*Interlocal Cooperation Act*"), the Parties desire to enter into an interlocal cooperative agreement whereunder Holladay will agree to reimburse

Cottonwood Heights for an appropriate share of the ongoing cost of the Stations allocated to Cottonwood Heights by UFA, as provided in this Agreement.

F. The Parties are “public agencies” for purposes of the Interlocal Cooperation Act, and are empowered to enter into this Agreement.

G. The Parties have determined that it is mutually advantageous to enter into this Agreement.

H. The Agreement shall entirely supersede any and all prior negotiations and agreements, oral and/or written, between the Parties regarding the subject matter of this Agreement.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the premises and in compliance with and pursuant to the terms hereof and the provisions of the Interlocal Cooperation Act, the Parties hereby agree as follows:

1. **Annual Reimbursement by Holladay.** Annually, Holladay shall reimburse Cottonwood Heights for the cost of providing First In Services coverage to the First In Areas; provided, however, that reimbursement is required only for routine First In Services from the Stations, and is not required for the relatively rare inter-jurisdiction “mutual aid” Services from other fire stations in Cottonwood Heights, which may occur when the need for Services in the First In Areas exceeds the Stations’ capacities to provide the necessary Services.

For the Parties’ current (1 July 2011 – 30 June 2012) fiscal year, the reimbursement (the “*Annual Fee*”) to be paid by Holladay shall total \$150,000. In subsequent fiscal years, the Annual Fee shall be adjusted (increased or decreased) from the immediate prior year’s Annual Fee in direct proportion to any general increase or decrease in the per firefighter cost charged by UFA to the UFA Members. The Annual Fee for any partial year of First In Services shall be prorated.

If Holladay decides to build a new fire station to provide First In Services to part or all of the First In Areas, then Holladay shall so inform Cottonwood Heights as soon as that decision is made, whether legally or practically, and in any event shall provide Cottonwood Heights at least one year’s prior notice before such new fire station is put into service.

2. **Procedure to Adjust Annual Fee.** If Cottonwood Heights desires to increase the Annual Fee, it shall so notify Holladay in writing, providing such backup detail and financial materials as may be appropriate to justify and quantify the proposed increase. Holladay then shall have 30 days to either approve the proposed increase or to provide Cottonwood Heights with such backup detail and financial materials as may be appropriate to justify and quantify any reduction in the proposed increase. If Holladay disagrees with the proposed increase, the Parties thereafter shall promptly and cooperatively work to determine the proper amount of any increase in the Annual Fee. If, alternatively, Holladay feels that a decrease in the Annual Fee is justified

due to a general decrease in UFA charges, then Holladay may initiate the review process, which then shall proceed in a similar manner as the process used to increase the Annual Fee.

3. **Payment.** Holladay shall pay two-thirds (66.67%) of the Annual Fee for a fiscal year on or before January 1st of that fiscal year, and the balance on or before June 1st of that fiscal year. Payment shall be made to Cottonwood Heights at its above address, or at such other address as Cottonwood Heights may specify from time to time in written notice to Holladay.

4. **Standards.** Each Party shall assure that its responsibilities hereunder are performed in full compliance with all applicable laws and standards of performance.

5. **Costs.** Each Party shall pay its own costs incurred in performing its responsibilities hereunder, including, without limitation, salaries and benefits to its personnel and all costs of equipment for such personnel.

6. **Conflict Resolution.** In the event of a dispute between the Parties regarding this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that the manager (or designee) of each of the Parties shall meet as soon as practical to discuss and attempt to resolve the dispute. If the Parties do not agree, then the dispute shall be resolved pursuant to section 13 below.

7. **Employment Status.**

(a) **Official Status.** Each Party shall have complete control and discretion over its personnel providing its required services hereunder, and the same shall at all times be and remain employees of such Party.

(b) **Salary, Wages and Benefits.** A Party shall not have any obligation or liability for the payment of any salaries, wages, pension, civil service, retirement or other benefits or compensation to any other Party's personnel performing such Party's responsibilities hereunder.

8. **Governmental Immunity.** Each of the Parties is a governmental entity under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. §63G-7-101, *et seq.*) (as amended from time to time, the "*Immunity Act*"). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each of the Parties is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. No Party waives any defenses otherwise available under the Immunity Act nor does any Party waive any limits of liability now or hereafter provided by the Immunity Act.

9. **Term.** This Agreement shall be effective as of the date specified above, and shall continue in effect thereafter through 30 June 2012. Thereafter, this Agreement shall be deemed automatically renewed for successive one-year (July 1st through June 30th) terms until such time as Holladay is not a Receiving Party and Cottonwood Heights is not a Paying Party with respect to each other in connection with First In Services.

10. **Termination.** Any Party may terminate this Agreement upon written notice to the other Party if Holladay is not a Receiving Party and Cottonwood Heights is not a Paying Party with respect to each other in connection with First In Services.

11. **Additional Interlocal Act Issues.**

(a) **No Separate Entity.** This Agreement does not create a separate legal/interlocal entity.

(b) **Joint Board.** As required by UTAH CODE ANN. §11-13-207, the Parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of each Party's manager (or designee). Any real or personal property used in the Parties' cooperative undertaking herein shall be acquired, held, and disposed of as determined by such joint board.

(c) **Financing Joint Cooperative Undertaking and Establishing Budget.** There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

12. **Notice.** Any written notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within two business days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the Parties at their respective addresses specified above.

13. **Claims and Disputes.** Claims, disputes and other issues between the Parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, each of the Parties shall continue to perform its obligations hereunder during the pendency of such dispute.

14. **Non-Funding.** Funds are not presently available for either Party's performance of this Agreement beyond 30 June 2012, which is the end of the Parties' current fiscal year. Each Party's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for payment due under this Agreement. If no funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on such Party as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated or in the event of reduction in appropriation, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Each Party shall endeavor to notify the other Party as soon as possible (preferably before December 31st of the prior year) when and if such financial circumstances may exist. Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payment, or other

charges of any kind whatsoever to the parties and no right or action or damages or other relief shall accrue to the benefit of a Party against the other Party as to this Agreement, or any portion thereof, which may so terminate and become null and void.

15. **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

16. **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

17. **Applicable Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

18. **Integration.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings concerning the subject matter of this Agreement.

19. **Time.** Time is the essence of this Agreement.

20. **Survival.** All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and any closings contemplated by this Agreement, and shall continue in full force and effect throughout the term of this Agreement.

21. **Waiver.** No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any Party may, by notice delivered in the manner provided in this Agreement, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

22. **Rights and Remedies.** The rights and remedies of the Parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provision(s) hereof.

23. **Severability.** In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

24. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

25. **Approval by Attorneys.** This Agreement shall be submitted to the authorized attorneys for each of the Parties for approval in accordance with UTAH CODE ANN. §11-13-202.5.

IN WITNESS WHEREOF, each of the Parties, by resolution duly adopted by its governing body, has caused this Agreement to be signed by its chief executive officer and attested by an authorized officer of such Party.

ATTEST:

CITY OF HOLLADAY

Stephanie Carlson, Recorder
Date signed: _____

By: _____
Dennis R. Webb, Mayor
Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____
H. Craig Hall, City Attorney
Date Signed: _____

ATTEST:

COTTONWOOD HEIGHTS

Linda W. Dunlavy, City Recorder
Date signed: _____

By: _____
Kelvyn H. Cullimore, Jr., Mayor
Date signed: _____

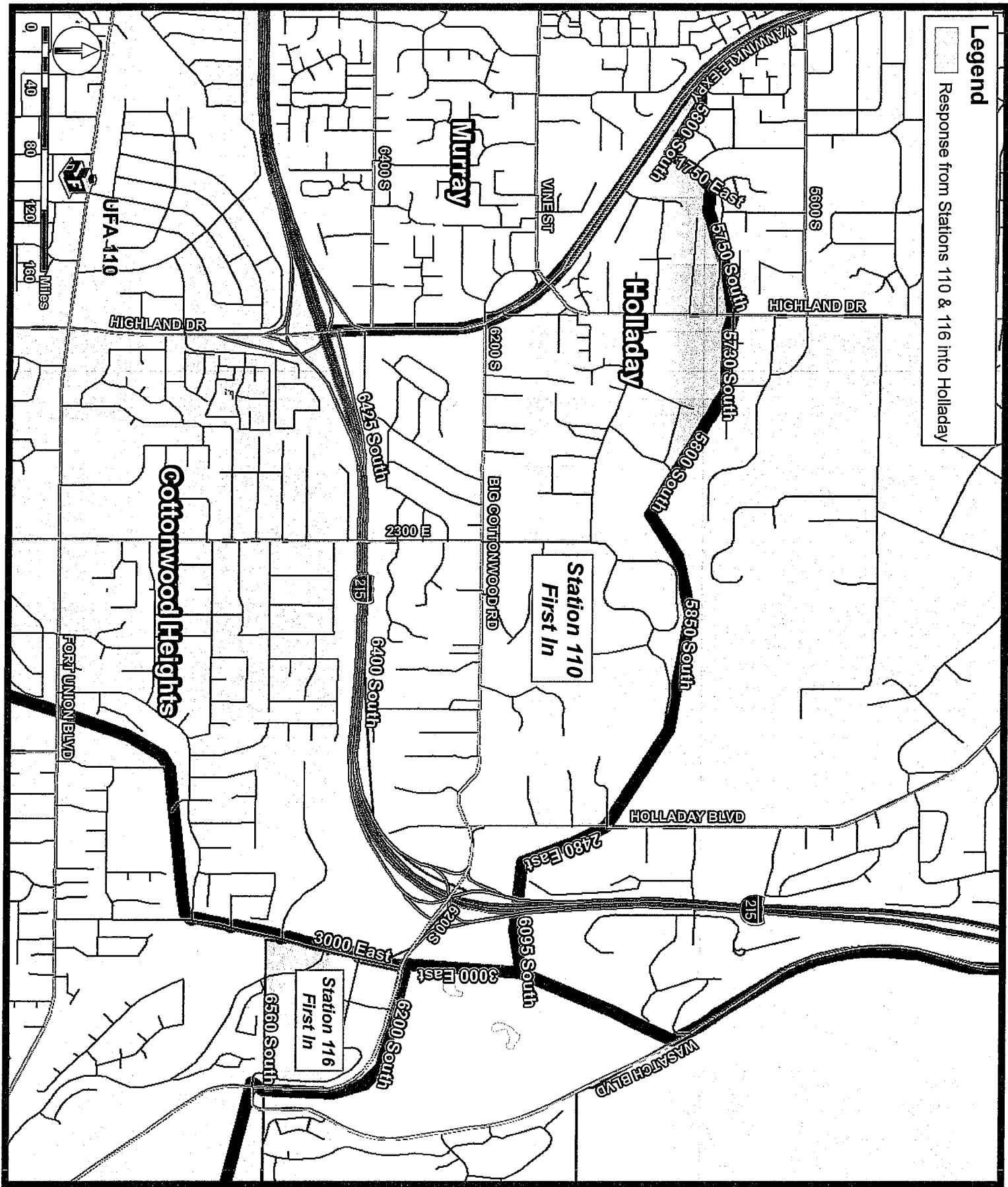
APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____
Wm. Shane Topham, City Attorney
Date Signed: _____

567741.5

Exhibit to
Interlocal Agreement for Cost Reimbursement for
Fire Protection and Emergency Medical Services Coverage

(Attach Copy of "First In" Map)



Cottonwood Heights/Holladay Area